

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Civil No. 09-cv-332-LM

Kenneth C. Isaacson, et al.

**O R D E R**

Before the court is the defendants' Motion to Reconsider (Doc. No. 47) this court's order of July 28, 2010. (Doc. No. 46). In that order, this court effectively denied defendants' request for an expedited hearing to resolve interpleader issues and permit partial disbursement of interpleaded funds. (Doc. No. 35). The court requested further briefing on the issues raised by the government's Status Report (Doc. No. 44). The parties have addressed in their respective submissions the substantive questions of (1) whether there is any legal authority for a court-ordered release of a portion of funds which are subject to the government's tax liens, and (2) whether, in any event, the relief defendants seek is barred by the Tax Anti-Injunction act, 26 U.S.C. § 7421. Accordingly, those issues are ripe for decision.

With respect to the first issue, Defendants argue that the scope of the liens is "unjust, inequitable and a taking of their

property without due process." That is, according to defendants, to the extent that the liens encumber defendants' property "in excess of the claimed lien amount," they are inequitable and a violation of the due process clause of the Fifth Amendment. As the government points out, defendants cite no authority for their assertions. Furthermore, their argument is undeveloped and fails to address the statutory authority the government has regarding the attachment of liens and its priority over many other creditors.

Specifically, pursuant to federal statutory authority, the United States may attach liens to any property or property rights that a taxpayer then holds or subsequently acquires. 26 U.S.C. § 6321. Moreover, the United States has priority over most creditors. 26 U.S.C. § 6323. Here, defendants seek a release of funds over which the United States has liens pursuant to section 6321 in order to pay creditors over whom the United States has priority pursuant to section 6323. Defendants have not shown by either citation to legal authority or sound legal reasoning that this court has authority to abrogate the operation of these statutory provisions.

Given this court's ruling with respect to the first issue, the court declines to decide whether the Tax Anti-Injunction Act would bar the relief defendants seek. Neither party has briefed

the foundational issue of whether the Tax Anti-Injunction Act, which by its terms prohibits "suit[s] for the purpose of restraining the assessment or collection of any tax," (26 U.S.C. § 7421(a)), would apply to a taxpayer's request for injunctive relief in a proceeding, such as this, which the government has brought against the taxpayer. Compare Bob Jones University v. Simon, 416 U.S. 725, 737 (1974) ("The Court has interpreted the principal purpose of [the act] to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with minimum of preenforcement judicial interference . . . .") (emphasis added) with United States v. Springer, 2010 WL 830614, \*20 (N.D. Okla. 2010) (defendant taxpayer's motion for order enjoining levy of additional assets, made during course of lien foreclosure suit by government, barred by Tax Anti-injunction act).<sup>1</sup>

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<sup>1</sup> It is clear that the form of relief that defendants seek is an injunctive order, the purpose of which is to restrain the assessment or collection of taxes. See Jackson v. Caldwell, 1981 WL 1923, \*2 (E.D. Mich. 1981) ("To the extent plaintiff seeks release of the escrowed funds from the reach of the federal tax lien, the action seeks to restrain the collection of tax and is barred by § 7421."). In addition, to establish an equitable exception to operation of the Tax Anti-injunction Act, defendants must show that "under no circumstances could the Government ultimately prevail." Enochs v. Williams Packing Co., 370 U.S. 1, 7 (1962). Defendant's argument that the government cannot "ultimately prevail" as to assets exceeding the amount of the assessments conflates the issue of liability for taxes assessed, to which the "ultimately prevail" language applies, with the remedy for such adjudicated liability.

Accordingly, for the foregoing reasons, the court denies the defendants' motion to reconsider (Doc. No. 47), and further denies defendants' underlying motion (Doc. No. 35), to the extent that defendants seek an order for partial disbursement of the interpleader funds.

SO ORDERED.



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Landya B. McCafferty  
United States Magistrate Judge

Dated: September 10, 2010

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